

Cite as 2011 Ark. 206

**SUPREME COURT OF ARKANSAS**

No. 10-1329

RAYMOND ELLIS, EXECUTOR OF  
THE ESTATE OF MILDRED FREEMAN,  
DECEASED

APPELLANT

VS.

STATE FARM BANK, F.S.B. A/K/A  
STATE FARM FINANCIAL SERVICES,  
F.S.B. AND D. DENISE GRIFFIN,  
ATTORNEY IN FACT

APPELLEES

**Opinion Delivered** May 12, 2011

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT,  
NO. CV2008-712,  
HON. RHONDA KAY WOOD, JUDGE,

REVERSED AND REMANDED.

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**JIM HANNAH, Chief Justice**

Appellant Raymond Ellis, administrator of the estate of Mildred Freeman, deceased, appeals the October 12, 2010 order of the Faulkner County Circuit Court that dismissed with prejudice his complaint and petition for declaratory relief that sought to void appellee State Farm Bank’s mortgagee’s deed. On appeal, Ellis contends that the circuit court erred (1) in declaring Arkansas Code Annotated section 28-50-101(h) (Repl. 2004) unconstitutional, and (2) in finding that State Farm Bank (“SFB”) met its burden of complying with the notice requirements of Arkansas Code Annotated section 18-50-104 (Repl. 2003).

We do not address the merits of Ellis’s arguments because the Attorney General was

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not notified of the constitutional challenge to section 28-50-101(h) as required by section 16-111-106(b) (Repl. 2006). Section 28-50-101(h) provides that

[n]otwithstanding any other provisions of this section to the contrary, the claims of all known or reasonably ascertainable creditors shall be barred at the end of two (2) years from date of first publication of notice to creditors, even if they have not been provided actual notice in accordance with § 28-40-111(a)(4).

Ark. Code Ann. § 28-50-101(h).

In its response to Ellis's petition for declaratory relief, SFB averred that it was a reasonably ascertainable creditor of the estate that did not receive actual notice of the probate proceedings. In support of its contention that it was entitled to receive actual notice, SFB cited *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988).

In its order, the circuit court concluded, in relevant part, that

Ark. Code Ann. § 28-50-101(h) is unconstitutional and violates the United States Constitution's 14th Amendment Due Process Clause to the extent it extinguishes claims of known creditors without those creditors' receipt of actual notice. As the United States Supreme Court held in *Pope*, there is a significant state action through the probate case. In this case, the creditor was known within 2 months of opening the Estate and the Estate simply chose to not provide the creditor notice.

Section 16-111-106(b) requires that "[i]n any proceeding" in which a statute is alleged to be unconstitutional, "the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard." The purpose of the notice requirement is to prevent a statute from being declared unconstitutional in a proceeding that might not be a complete and fully adversary adjudication. *E.g.*, *Ark. Dep't of Human Servs. v. Heath*, 307 Ark. 147, 817 S.W.2d 885 (1991). In the instant case, the constitutionality of section 28-50-101(h)

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was implicated only when the circuit court relied on constitutional grounds in dismissing Ellis's complaint and petition for declaratory relief. Because the constitutional arguments were not fully developed before the circuit court, a decision on the merits would circumvent the purpose of the notice requirement. *Id.* Accordingly, we reverse and remand to allow conformance with the requirements of section 16-111-106(b).

Reversed and remanded.